

DRAFT Comment Summary and Responses
Amendments to the Water Quality Control Plan for the Los Angeles Region to Revise the Implementation
Schedules for Nine TMDLs for
Municipal Separate Storm Sewer System (MS4) Dischargers
Comment Due Date: June 21, 2021

No.	Author	Date Received
1.	County of Ventura, City of Thousand Oaks, Ventura County Watershed Protection District (Ventura County)	6/17/2021
2.	Los Angeles Waterkeeper, Heal the Bay, and the Natural Resources Defense Council (Environmental Groups)	6/14/2021
3.	Gardena Valley Democratic Club	6/11/2021
4.	City of Norwalk	6/14/2021
5.	TECS Environmental	6/14/2021
6.	City of Rosemead	6/14/2021
7.	County of Los Angeles and Los Angeles County Flood Control District (LA County & LACFC)	6/17/2021
8.	Lower Los Angeles River Watershed Management Group (LLAR WMG)	6/14/2021

No.	Author	Comment	Response
0.1	Multiple	The State Water Resources Control Board (State Water Board) received eight comment letters regarding its consideration of approval of this amendment to the Water Quality Control Plan for the Los Angeles Region (Basin Plan) to revise nine Total Maximum Daily Load (TMDL) implementation schedules applicable to Municipal Separate Storm Sewer System (MS4) Dischargers. Many of the comments were either previously submitted to the Los Angeles Regional Water Quality Control Board (Los Angeles Water Board) without further explanation, or were not timely raised before	In accordance with section 3779, subdivision (f) of Title 23 of the California Code of Regulations, the State Water Board's Notice of Opportunity to Comment (Notice) concerning these Basin Plan amendments clearly stated that any person submitting a comment "must include either a statement that each of the comments was timely raised before the Los Angeles Water Board, or an explanation of why the commenter was unable to raise the specific comment before the Los Angeles Water Board."

DRAFT Comment Summary and Responses
Amendments to the Water Quality Control Plan for the Los Angeles Region to Revise the Implementation
Schedules for Nine TMDLs for
Municipal Separate Storm Sewer System (MS4) Dischargers
Comment Due Date: June 21, 2021

		<p>the Los Angeles Water Board and no explanation was provided as to why the commenter was unable to raise the specific comment before the Los Angeles Water Board.</p>	<p>If the Los Angeles Water Board previously responded to a similar or identical comment, the Notice indicated that “the commenter must explain why and in what manner the commenter believes each of the responses provided by the Los Angeles Water Board to each comment was inadequate or incorrect.” Additionally, the Notice indicated comments submitted to the State Water Board must be specifically related to the final amendment adopted by the regional board. The State Water Board may refuse to accept any comments that do not comply with the Notice. The State Water Board declines to accept the following comments:</p> <p>The comment letter from Ventura County largely restated their prior comments for the record. However, portions of the comment letter related to a motion made by Los Angeles Water Board member James Stahl at the March 11, 2021 hearing, which, if passed, would have extended all the TMDL deadlines under consideration by ten years. This motion failed and does not reflect the Los Angeles Water Board’s final amendment. However, this comment is addressed in response to comment No. 1.6.</p>
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DRAFT Comment Summary and Responses
Amendments to the Water Quality Control Plan for the Los Angeles Region to Revise the Implementation
Schedules for Nine TMDLs for
Municipal Separate Storm Sewer System (MS4) Dischargers
Comment Due Date: June 21, 2021

			<p>Portions of the comment letters from the Gardena Valley Democratic Club, the City of Norwalk, TECS, Environmental Groups, and the City of Rosemead were not raised in writing or orally at the Los Angeles Water Board's hearing on the Amendments. No justification was provided as to why these comments could not have been timely raised. Responses are provided below where appropriate. However, many of these comments are issues about the incorporation of TMDL-based requirements into the Los Angeles Water Board's MS4 permit unrelated to the TMDLs' implementation schedules, so they are beyond the scope of this proceeding. Permits adopted by a regional water board are reviewable by an administrative petition to the State Water Board pursuant to section 13320 of the Water Code. Therefore, any comments on the incorporation of TMDLs in the Los Angeles Water Board's MS4 permit that do not relate to the TMDLs' implementation schedules will not be considered by the State Water Board at this time.</p>
1.1	Ventura County	The County of Ventura (County), City of Thousand Oaks (City), and Ventura County Watershed Protection District (District)	Ventura County's support for the extensions is noted.

DRAFT Comment Summary and Responses
Amendments to the Water Quality Control Plan for the Los Angeles Region to Revise the Implementation
Schedules for Nine TMDLs for
Municipal Separate Storm Sewer System (MS4) Dischargers
Comment Due Date: June 21, 2021

		<p>(Responsible Agencies) are submitting this letter to comment on the Proposed Approval of the Los Angeles Regional Water Quality Control Board's (Regional Board) amendments to the Water Quality Control Plan for the Los Angeles Region (BPA) that would extend final Total Maximum Daily Load (TMDL) Implementation deadlines for certain TMDLs. The County, City, and District appreciate the opportunity to comment on the proposed approval of the BPA and are providing comments applicable to the Malibu Creek Watershed Bacteria TMDL (MCW Bacteria TMDL).</p> <p>The Responsible Agencies appreciate the State Water Resources Control Board's (State Board) consideration of the BPA TMDL extensions. The Responsible Agencies support the approval of the BPA that provides a five-year extension of the wet weather compliance deadline to July 15, 2026 for the MCW Bacteria TMDL. The five-year TMDL extension will provide the Responsible Agencies with additional time needed to secure funding for current projects, develop new project concepts, design structural improvements, and undertake implementation actions. While the Responsible Agencies appreciate the five-year extension and support approval of the extension by the State Board, the Responsible Agencies</p>	<p>To the extent Ventura County has noted "for the record" that a five-year extension is too short, see response to comment No. 0.1. Ventura County previously made similar comments to the Los Angeles Water Board and the Los Angeles Water Board responded to those comments – see comments and responses to comment Nos. 5.1, 5.3, 5.4 and 4.5 in the <u>Final Comment Summary and Responses for Consideration of Extension of Final TMDL Implementation Deadlines</u>.</p> <p>The State Water Board has reviewed the Los Angeles Water Board's justification for the 5-year extension for the Malibu Creek Bacteria TMDL in the Staff Report as well as the responses to comments.</p> <p>While the Los Angeles Water Board acknowledged that bacteria is difficult to treat in wet weather, the Los Angeles Water Board also considered the original length of the implementation schedule for this TMDL, previous extensions granted to MS4 permittees to achieve compliance with this TMDL, and planning and implementation of projects to date, among other factors, when ultimately concluding that a 5-year extension was appropriate at this time. For example, in</p>
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DRAFT Comment Summary and Responses
Amendments to the Water Quality Control Plan for the Los Angeles Region to Revise the Implementation
Schedules for Nine TMDLs for
Municipal Separate Storm Sewer System (MS4) Dischargers
Comment Due Date: June 21, 2021

		<p>would like to also go on the record that the 5-year extension does not provide sufficient time for the magnitude of implementation actions that are necessary to reach compliance for the MCW Bacteria TMDL.</p>	<p>response to comment Nos. 5.1 and 5.4, the Los Angeles Water Board states, in relevant part:</p> <ul style="list-style-type: none"> • “The Los Angeles Water Board acknowledges the difficulties in treating bacteria in wet weather. This was part of the rationale, along with supporting an integrated approach, for extending the wet-weather deadline from January 10, 2016 to July 15, 2021 when the TMDL was reconsidered in 2012.” • “It has been 15 years since the Malibu Creek Bacteria TMDL became effective and 13 years since the County, City, and the District, along with other Malibu Creek Watershed permittees, submitted an Implementation Plan for the TMDL.” • “... The County, the City, and the District have been updating and refining implementation plans since 2007, and additional time for planning is not supported. An extension of five years, plus additional time through a TSO if warranted, allows permittees to
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DRAFT Comment Summary and Responses
Amendments to the Water Quality Control Plan for the Los Angeles Region to Revise the Implementation
Schedules for Nine TMDLs for
Municipal Separate Storm Sewer System (MS4) Dischargers
Comment Due Date: June 21, 2021

			<p>pursue funding and construct the projects that have already been planned for.”</p> <p>The State Water Board has reviewed the above rationale and agrees that the Los Angeles Water Board has provided sufficient justification for the 5-year extension in the Malibu Creek Bacteria TMDL.</p>
1.2	Ventura County	When approving this action, the Responsible Agencies encourage the State Board to direct Regional Boards to rethink how they approach TMDL extension evaluations in the future based on lessons learned implementing TMDLs over the past 10 to 15 years.	<p>The State Water Board declines to provide formal direction to the regional boards on which factors should be considered when evaluating extension of TMDL implementation schedules. The State Water Board’s action with respect to these amendments to the Los Angeles Water Board’s Basin Plan has no direct precedential value for other regional boards. Further, each TMDL in California presents unique circumstances and challenges that may warrant evaluation of different factors when determining whether to extend previously adopted TMDL implementation schedules.</p> <p>The State Water Board has reviewed the factors considered by the Los Angeles Water to support these extensions and finds that</p>

DRAFT Comment Summary and Responses
Amendments to the Water Quality Control Plan for the Los Angeles Region to Revise the Implementation
Schedules for Nine TMDLs for
Municipal Separate Storm Sewer System (MS4) Dischargers
Comment Due Date: June 21, 2021

			<p>the Los Angeles Water Board's approach was appropriate. The Los Angeles Water Board considered the original length of the TMDL schedules, the status of water quality, the water quality improvement projects that have been completed, and the projects that have been planned. The Los Angeles Water Board also evaluated the costs (and available funding) to complete BMPs to achieve compliance with final waste load allocations and the unanticipated impact of the COVID-19 pandemic on cities and counties.</p> <p>The extensions approved by the Los Angeles Water Board are well within the regional board's discretion. If the Los Angeles Water Board determines that additional time to comply with the final deadline is warranted, the Los Angeles Water Board has the authority and discretion to reconsider these deadlines at a future date.</p>
1.3	Ventura County	The majority of TMDLs in Ventura County were developed between 2005 and 2008 with timelines that were between 2 and 20 years in length depending on the constituents. At the time of TMDL development, no MS4 Permittee in Ventura County had undertaken programs to	See response to comment No. 0.1. This comment was previously made to the Los Angeles Water Board by the Ventura Countywide Stormwater Quality Management Program and the Los Angeles Water Board responded to it - see comment

DRAFT Comment Summary and Responses
Amendments to the Water Quality Control Plan for the Los Angeles Region to Revise the Implementation
Schedules for Nine TMDLs for
Municipal Separate Storm Sewer System (MS4) Dischargers
Comment Due Date: June 21, 2021

		<p>comply with TMDL requirements and no permit requirements had been established to incorporate TMDL requirements. There was no understanding of the scale of the capital improvement program that would be needed to address wet weather discharges. As a result, the original TMDL schedules were based on educated guesses regarding the time needed to complete implementation. Many of the TMDLs acknowledged this by including reevaluations of the schedules at various points once data gaps had been addressed and permittees had a better understanding of the implementation actions needed to meet the TMDL requirements. After implementation began and the Responsible Agencies recognized the magnitude of the implementation effort necessary to meet the Malibu Creek Bacteria TMDL, the Responsible Agencies requested additional time be added to the implementation schedule. During the reconsideration of the MCW Bacteria TMDL in 2012, when the Los Angeles Regional Board proposed TMDL-allowed wet weather extension from July 15, 2016 to July 15, 2021, the County stated that also the initial dry weather compliance deadlines in the TMDL were insufficient, and that additional time was necessary to comply with the updated compliance requirements of the</p>	<p>and response to comment No. 6.5 in the <u>Final Comment Summary and Responses for Consideration of Extension of Final TMDL Implementation Deadlines</u>.</p> <p>The State Water Board has reviewed response to comment No. 6.5, the relevant portion of which states:</p> <p>“The assertion that Ventura County permittees requested longer timelines during TMDL development and reconsideration is not entirely accurate. ... When the Los Angeles Water Board reconsidered the Malibu Creek Bacteria TMDL in 2012, Ventura County supported the wet-weather deadline of July 15, 2021. The City of Thousand Oaks asked for a three-year extension of the proposed 2021 wet-weather deadline, which was not approved.”</p> <p>The State Water Board acknowledges that the length of TMDL implementation schedules is often subject to significant public discussion during the initial TMDL adoption and during any subsequent reconsideration. However, as stated in response to comment Nos. 1.1 and 1.2, the Los Angeles Water Board acted within its</p>
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DRAFT Comment Summary and Responses
Amendments to the Water Quality Control Plan for the Los Angeles Region to Revise the Implementation
Schedules for Nine TMDLs for
Municipal Separate Storm Sewer System (MS4) Dischargers
Comment Due Date: June 21, 2021

		<p>revised TMDL. Additionally, the City asked for an additional three-year extension till July 15, 2024 of the proposed wet weather compliance deadline due to delays in the TMDL Reopener Process. However, the requests to extend TMDL compliance deadlines were not granted by the Regional Board. Moreover, TMDL implementation schedule included reconsideration of the TMDL by July 15, 2018, which did not occur.</p>	<p>discretion when determining which factors to consider when determining whether, and for how long, to further extend the Malibu Creek Bacteria TMDL deadline.</p> <p>Regarding the comment pertaining to dry-weather extensions, another commenter made a similar comment to the Los Angeles Water Board (comment No. 4.2). The State Water Board has reviewed and agrees with the Los Angeles Water Board's response, which explains that the Los Angeles Water Board did not propose dry weather-related TMDL deadline extensions:</p> <p>"...due to the prohibition on non-stormwater discharges, which has been in place since the 1990s, and because permittees have had success complying with, or are approaching compliance with, most dry-weather deadlines..."</p>
1.4	Ventura County	<p>The Responsible Agencies are located in multiple watersheds and are subject to several TMDLs, all of which were required to be implemented simultaneously. The Responsible Agencies began implementation of TMDLs as soon as they became effective, even when they were not included in the MS4 permit. Activities</p>	<p>See response to comment No. 0.1. Ventura County previously made a similar comment to the Los Angeles Water Board and the Los Angeles Water Board responded to it - see comment and response to comment No. 5.1 in the <i>Final Comment Summary and Responses for Consideration of Extension of</i></p>

DRAFT Comment Summary and Responses
Amendments to the Water Quality Control Plan for the Los Angeles Region to Revise the Implementation
Schedules for Nine TMDLs for
Municipal Separate Storm Sewer System (MS4) Dischargers
Comment Due Date: June 21, 2021

		<p>included joining with agricultural and wastewater dischargers to develop coordinated monitoring programs, conduct special studies and develop implementation plans. Additionally, the Responsible Agencies began a structured implementation of the TMDLs which focused on implementing targeted source control activities (including installation of new and redevelopment structural control measures) to reduce pollutant discharges as much as possible, followed by the identification and installation of structural control measures where needed. For some TMDLs, the targeted source control measures have been sufficient or are anticipated to likely be sufficient by the TMDL compliance date. For other TMDLs, significant investment in structural control measures is needed.</p> <p>In the Malibu Creek Watershed, the Responsible Agencies have implemented source control measures to address bacteria, including efforts to control dry weather irrigation runoff, public outreach and education, full capture trash devices, street sweeping, and catch basin cleaning. Additionally, the Responsible Agencies explored opportunities to implement dry weather diversions, which at the time were not allowed by the wastewater agency, conducted a source identification study, and began implementation</p>	<p><u>Final TMDL Implementation Deadlines</u>. The State Water Board reviewed Los Angeles Water Board's response to comment No. 5.1.</p> <p>Regarding Ventura County's statement that the "Regional Board stated [in its response to comments] that onsite wastewater treatment systems, horses, livestock, and wildlife will not affect the ability of MS4 permittees to achieve the MCW Bacteria TMDL," the State Water Board disagrees with this characterization of the Los Angeles Water Board's response.</p> <p>The relevant portion of the Los Angeles Water Board's response to comment No. 5.1 states: "The examples of sources cited in the comment letter to explain why it is difficult to treat bacteria in wet weather (e.g., onsite wastewater treatment systems, horse and livestock, wildlife) are not the responsibility of MS4 permittees and will not affect the ability of permittees to achieve the TMDL." The Los Angeles Water Board was merely pointing out that MS4 permittees are only responsible for achieving compliance with the specific waste load allocations assigned to them. MS4 permittees are not responsible for achieving compliance with any load</p>
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DRAFT Comment Summary and Responses
Amendments to the Water Quality Control Plan for the Los Angeles Region to Revise the Implementation
Schedules for Nine TMDLs for
Municipal Separate Storm Sewer System (MS4) Dischargers
Comment Due Date: June 21, 2021

		<p>of a structural control project in Oak Park. Despite these efforts, wet weather bacteria exceedances remained and the Responsible Agencies have determined additional structural control measures are needed.</p> <p>However, in Malibu Creek, wet weather bacteria elevated levels are difficult to address due to the multitude of sources, which include onsite wastewater treatment systems, stormwater runoff, horse and livestock, wildlife, golf courses, tidal inflow to the lagoon, sanitary sewer overflows, and others (LARWQCB, 2004). The Regional Board stated that onsite wastewater treatment systems, horses, livestock, and wildlife will not affect the ability of MS4 permittees to achieve the MCW Bacteria TMDL. However, bacteria from many of these sources have the ability to enter MS4 system and lead to bacteria exceedances. Additionally, the distributed nature of the Ventura County MS4 system in the Malibu Creek watershed combined with geology that is not conducive to infiltration BMPs which results in significant challenges for identifying and implementing cost effective structural control measures that can effectively address bacteria.</p>	<p>allocations applicable to nonpoint sources of bacteria such as onsite wastewater treatment systems, agricultural runoff, or open space, unless the MS4 permittee is itself a non-point source that has been separately assigned a load allocation (e.g., where a city owns and operates open spaces or parks where there is diffuse runoff to a waterbody not through a MS4). Deadlines applicable to non-point sources are beyond the scope of this basin planning action. However, the Los Angeles Water has the discretion and authority to reevaluate these deadlines at any time.</p> <p>To the extent this comment provides additional argument in support of a lengthier extension for the Malibu Creek Bacteria TMDL, see response to comment Nos. 1.1 and 1.2.</p>
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DRAFT Comment Summary and Responses
Amendments to the Water Quality Control Plan for the Los Angeles Region to Revise the Implementation
Schedules for Nine TMDLs for
Municipal Separate Storm Sewer System (MS4) Dischargers
Comment Due Date: June 21, 2021

1.5	Ventura County	Through construction of structural control measures in the Malibu Creek Watershed and for other TMDLs, the Responsible Agencies have learned a lot about the time, resources and challenges associated with stormwater capital improvement projects. Based on this experience, it has become clear that even if sufficient funding were available, the TMDL schedule for the Malibu Creek Watershed, even with the extension, is too short to be realistically implemented. The Regional Board Staff Report stated that a five-year TMDL extension would allow the Responsible Agencies enough time to pursue funding and construct the necessary projects to reach TMDL compliance. ⁴ However in the BPA Staff report, the implementation timeframe of 5-7 years from design to completion that was included in the BPA Staff Report is not realistic for this watershed. The BPA Staff Report considered testimony from Los Angeles County Public Works staff and other permittees at Board meetings and workshops to determine that TMDL implementation projects can take from 5-7 years per project from design to completion (LARWQCB, 2020). Assuming that design takes 1-2 years, 3-5 years is needed for construction. ⁴ The estimate by the Regional Board does not accurately take into account the	See response to comment No. 0.1. This comment was previously made to the Los Angeles Water Board and the Los Angeles Water Board responded to it. See responses to comment Nos. 5.3, and 4.5 in the Final Comment Summary and Responses for Consideration of Extension of Final TMDL Implementation Deadlines . The State Water Board has reviewed these responses. To the extent this comment provides additional argument in support of a lengthier extension for the Malibu Creek Bacteria TMDL, see response to comment Nos. 1.1 and 1.2.
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DRAFT Comment Summary and Responses
Amendments to the Water Quality Control Plan for the Los Angeles Region to Revise the Implementation
Schedules for Nine TMDLs for
Municipal Separate Storm Sewer System (MS4) Dischargers
Comment Due Date: June 21, 2021

		<p>time required to design and construct a project.</p> <p>Additionally, the implementation schedule fails to consider the time it will take for Permittees to secure funding for the MCW projects as they do not yet have a dedicated funding source and implementing projects in the MCW is more complex than other watersheds. Projects in the MCW will likely involve collaboration with other agencies that are not subject to the TMDL and challenges with residents that are not receptive to stormwater projects. For example, the Oak Park Green Street Retrofit Project in the County unincorporated community of Oak Park, CA, was delayed over 5 years and finally completed in February 2021, due to public concerns and construction delays that could not be avoided or ignored by the County and the District. Even if the Responsible Agencies had all the necessary funding, the current TMDL extension of 5 years is insufficient to complete any structural improvement and/or stormwater treatment project. Even during strong economic periods, completing this unprecedented number of remaining capital improvement projects is not realistic with the current staffing resources available.</p> <p>⁴ Consideration of Extension of Final TMDL</p>	
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DRAFT Comment Summary and Responses
Amendments to the Water Quality Control Plan for the Los Angeles Region to Revise the Implementation
Schedules for Nine TMDLs for
Municipal Separate Storm Sewer System (MS4) Dischargers
Comment Due Date: June 21, 2021

		Implementation Deadlines for Certain TMDLs in the Los Angeles Region Staff Report (BPA Staff Report). Page 8.	
1.6	Ventura County	<p>Board Members of the Los Angeles Regional Board have also recognized the complexity of meeting wet-weather compliance deadlines and the need for longer TMDL extensions. During the March 11, 2021 Regional Board Meeting, Board Member James Stahl made a motion to replace staff's recommended extensions with a ten-year extension of wet weather implementation deadlines through the BPA for the nine TMDLs including Malibu Creek Bacteria TMDL.⁵ While the motion was not carried, three Board Members (Chair Lawrence Yee, James Stahl, and Irma Muñoz) voted in favor of the motion to extend the length of the TMDL extensions. During the motion to pass the staff recommended extensions, Board Member Stahl voted "Yes" while reiterating that he continued to believe the extensions were too short.</p> <p>The action by the Board Members was compelled by the recognition that Permittees have learned a lot about implementation of control measures to meet TMDL requirements since the original TMDL schedules were developed. It is our understanding, and the</p>	<p>The State Water Board acknowledges that Board Member Stahl proposed a motion to provide a 10-year extension for all of the TMDLs under consideration by the Los Angeles Water Board at the February and March hearings. Board member Stahl's stated intent for his motion was to allow additional time for MS4 permittees to recover from the economic impacts associated with the COVID-19 pandemic and give permittees additional flexibility and compliance certainty during the TMDL implementation period. However, Board member Stahl only secured three votes, including his own, in support of his motion so the motion did not carry. Board member Stahl's motion failed not because the other Board members did not recognize the length of time needed to implement stormwater control measures. Rather, the motion failed because Board member Stahl's perspective was the minority position.</p> <p>Ultimately, a majority of the Los Angeles Water Board adopted basin plan amendments that would provide short-term</p>

DRAFT Comment Summary and Responses
Amendments to the Water Quality Control Plan for the Los Angeles Region to Revise the Implementation
Schedules for Nine TMDLs for
Municipal Separate Storm Sewer System (MS4) Dischargers
Comment Due Date: June 21, 2021

		<p>Responsible Agencies have requested, that the Los Angeles Regional Board reconsider the TMDL deadline for some other TMDLs in the future. The Responsible Agencies request that the State Board provide direction to the Regional Water Boards to consider the costs and timelines for implementation of control measures based on actual project experience and the Watershed Management Program planning efforts that have already been undertaken in Los Angeles County and will be completed over the next few years in Ventura County. While the original TMDL schedules were by necessity established based on minimal information, that situation no longer exists, and realistic timelines need to be established to support the success of the implementation programs. Using actual project timelines is routinely used as the approach for setting deadlines for wastewater permittees and should also be used for municipal stormwater permittees now that more information is available to conduct the evaluation.</p> <p>While the Responsible Agencies understand the concerns with the time that has elapsed since the TMDLs were originally developed, as noted above, the Responsible Agencies have been systematically working through implementation</p>	<p>relief from immediate deadlines and maintain accountability for MS4 permittees to come into compliance with water quality standards. In doing so, the Los Angeles Water Board considered the facts and circumstances of each TMDL holistically, including implementation challenges. Therefore, the State Water Board declines to direct the Los Angeles Water Board to consider additional information as proposed by Ventura County. The State Water Board also notes that the final motion approving adoption of the Basin Plan Amendments to extend these TMDL deadlines was adopted unanimously.</p> <p>To the extent this comment provides additional argument in support of a lengthier extension for the Malibu Creek Bacteria TMDL, see response to comment Nos. 1.1 and 1.2.</p>
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DRAFT Comment Summary and Responses
Amendments to the Water Quality Control Plan for the Los Angeles Region to Revise the Implementation
Schedules for Nine TMDLs for
Municipal Separate Storm Sewer System (MS4) Dischargers
Comment Due Date: June 21, 2021

		<p>and have made significant progress on many TMDLs. Wet weather bacteria are a significant challenge that simply requires more time. The consideration of progress cannot be assessed separately by TMDL but should be considered holistically with the recognition of the multitude of demands on our time and resources.</p> <p>Summary</p> <p>The Responsible Agencies support the five-year extension of the wet weather compliance deadline to July 15, 2026 under the BPA. The five-year TMDL extension will provide additional time to continue current implementation actions, maybe secure funding, develop project concepts, and maybe undertake new control measures to meet the implementation goals of the MCW Bacteria TMDL. However, for the reasons listed above, the extension period of five years for implementation is not sufficient to address the challenges associated with securing funding and completing planning, construction, and implementation of remaining capital improvement projects. As a result, the Responsible Agencies request that in approving the extension, the State Board direct the Los Angeles Regional Board to utilize construction schedule and cost information from Ventura</p>	
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DRAFT Comment Summary and Responses
Amendments to the Water Quality Control Plan for the Los Angeles Region to Revise the Implementation
Schedules for Nine TMDLs for
Municipal Separate Storm Sewer System (MS4) Dischargers
Comment Due Date: June 21, 2021

		<p>County Stormwater Permittees.</p> <p>⁵https://www.waterboards.ca.gov/losangeles/board_info/minutes/2021/Approved%20March%20Meeting%20Minutes.pdf</p>	
2.1	Environmental Groups	<p>On behalf of Los Angeles Waterkeeper, Heal the Bay, and the Natural Resources Defense Council, environmental nonprofit organizations that represent over 16,000 Angelenos that support safe and healthy waterways, we write to express our opposition to proposed extensions of deadlines for TMDLs in the Los Angeles Region, many involving bacteria.</p> <p>First, we remind the State Water Resources Control Board (State Board) that these deadlines were the product of often lengthy and contentious negotiations, on which many stakeholders including dischargers and our organizations spent considerable time and resources. Additionally, these deadlines typically included very generous amounts of time before final TMDL requirements were to be met. Indeed, the staff report finds that the TMDL deadlines “were not short schedules.” (Staff Report p.9.) It is also important to remember the purpose of these deadlines. They exist “to attain water quality standards, and protect human</p>	<p>See response to comment No. 0.1. The Environmental Groups previously made a nearly identical comment to the Los Angeles Water Board and no explanation of why the regional board response was inadequate was provided. See comments and response to comment No. 8.2 in the Final Comment Summary and Responses for Consideration of Extension of Final TMDL Implementation Deadlines.</p> <p>In relevant part, the Los Angeles Water Board responded:</p> <p>“The TMDLs under reconsideration were developed to restore impaired waters, attain water quality standards, and protect human health, aquatic life, and the environment. Extending deadlines does not deprioritize these goals. The purpose of the deadline extensions is to address requests for extensions of imminent final deadlines from permittees while considering the need to</p>

DRAFT Comment Summary and Responses
Amendments to the Water Quality Control Plan for the Los Angeles Region to Revise the Implementation
Schedules for Nine TMDLs for
Municipal Separate Storm Sewer System (MS4) Dischargers
Comment Due Date: June 21, 2021

		health, aquatic life, and the environment.” (Staff Report p.9.)	<p>restore water quality and protect public health and the environment in a reasonable timeframe. The recommended extensions seek to balance these two aims, while also recognizing the unprecedented impact of the COVID-19 pandemic on cities and counties.”</p> <p>The State Water Board has reviewed and agrees with Los Angeles Water Board’s response. Additionally, the State Water Board notes that TMDLs are adopted with the best information available to the regional boards at the time. However, in some cases, TMDLs and associated implementation schedules may need to be revised due to new information or changed circumstances. The fact that these TMDLs were adopted after lengthy, and even contentious negotiations, is not in and of itself a reason to disapprove such revisions.</p>
2.2	Environmental Groups	We request that the State Board remand the proposed TMDL extensions for reconsideration, with guidance as to the required analysis, because the Los Angeles Regional Water Quality Control Board’s rationale is inconsistent with current economic and political conditions, and with the purpose of the TMDLs and the	The State Water Board finds that it is unnecessary to remand the Los Angeles Water Board’s action to extend TMDL deadlines because the Los Angeles Water Board analysis of the economic impacts of the pandemic, the original length of the TMDL schedules, the need for improving water quality, and other considerations, was

DRAFT Comment Summary and Responses
Amendments to the Water Quality Control Plan for the Los Angeles Region to Revise the Implementation
Schedules for Nine TMDLs for
Municipal Separate Storm Sewer System (MS4) Dischargers
Comment Due Date: June 21, 2021

		<p>implementing Los Angeles County MS4 Permit.</p> <p>The Regional Board Did Not Consider Current Economic and Political Conditions</p> <p>In approving the TMDL extensions, the Regional Board relied heavily on the impacts of the COVID pandemic on the ability of Los Angeles County municipalities to comply with TMDL deadlines for stormwater discharges. The Regional Board asserts that COVID has both impacted BMP implementation and has reduced funds available to municipalities to implement BMPs.</p> <p>Yet the TMDL compliance extensions approved by the Regional Board go far beyond any delays caused by COVID. The State of California will reopen 14 June 2021—today’s date. Thus, the COVID pandemic shut down has extended 15 to 18 months—not the five to six years of delay to compliance deadlines provided by the Regional Board.</p> <p>Further, the financial impact of COVID on municipal and State budgets has been significantly less than expected. Anecdotal evidence indicates that City revenues have suffered minimal reductions, and the Regional</p>	<p>thorough and sufficient to support the adopted extensions.</p> <p>The State Water Board acknowledges that the financial impact of the COVID-19 pandemic on state and municipal budgets may not be as severe as early projections. However, the fiscal impacts of the COVID-19 pandemic on municipalities was only one factor in considering whether to provide an extension of these TMDL deadlines.</p> <p>Even where the Los Angeles Water Board approved an extension solely based on the fiscal impacts of COVID-19 (e.g., the Marina del Rey TMDLs), these extensions were limited to 3 years. The State Water Board agrees that a 3-year extension to account for the COVID-19 pandemic is reasonable because, as the recent outbreaks associated with the Delta variant underscore, the COVID-19 pandemic and response remain dynamic. It may be some time before the true cost of the pandemic to municipalities and their residents is known. The extensions approved by Los Angeles Water Board account for this inherent uncertainty in current circumstances, while also seeking to balance the progress, or lack of thereof, on</p>
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DRAFT Comment Summary and Responses
Amendments to the Water Quality Control Plan for the Los Angeles Region to Revise the Implementation
Schedules for Nine TMDLs for
Municipal Separate Storm Sewer System (MS4) Dischargers
Comment Due Date: June 21, 2021

		<p>Board provided no evidence of impacts to support its decision. And contrary to the dire financial picture painted by both the Regional Board and permittees, the state currently has an “unprecedented surplus,” in the tens of billions of dollars, and possibly up to \$100 billion. Both the Governor’s and Legislature’s spending plans include hundreds of millions of dollars for stormwater infrastructure projects. At the federal level, funds are currently available via the American Recovery Plan Act, with the city of Los Angeles alone poised to receive \$1.278 billion. This economic reality is a stark contrast to the Regional Board’s assertions supporting the TMDL extensions.</p> <p>Because the basis for the extensions is unrelated to their duration, remanding the TMDL extensions with direction to shorten any delay to accurately reflect genuine impacts on MS4 compliance programs from COVID.</p>	<p>BMP implementation to date. (See response to comment No. 2.2, stating that “[t]he overarching purpose of the TMDL deadline extensions is to address requests for extensions of imminent final deadlines from permittees while considering the need to restore water quality and protect public health in a reasonable timeframe... while also recognizing the unprecedented impact of the COVID-19 pandemic on cities and counties.”)</p> <p>The State Water Board finds that the three- to five-year extensions are reasonable considering the recent financial impacts on municipal governments. In addition, per Resolution No. R21-001, permittees that were granted extensions must provide an oral progress report and a written summary to the Los Angeles Water Board every year until waste load allocations are achieved, giving the Los Angeles Water Board an opportunity to closely track implementation progress on these TMDLs, including any effects associated with the COVID-19 pandemic and/or other events that may impact BMP implementation in Los Angeles and Ventura counties in the future.</p>
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DRAFT Comment Summary and Responses
Amendments to the Water Quality Control Plan for the Los Angeles Region to Revise the Implementation
Schedules for Nine TMDLs for
Municipal Separate Storm Sewer System (MS4) Dischargers
Comment Due Date: June 21, 2021

2.2	Environmental Groups	<p>These Extensions are Bad Public Policy.</p> <p>The dischargers have known about these deadlines for over a decade, in some cases close to two decades. (Staff Report p.6 [deadlines for bacteria have been pending for 14-18 years].) And yet, at the Regional Board's TMDL workshop, several dischargers admitted to making only 2-3% of the investments needed to meet final TMDL limits. Our analysis of implementation of identified Enhanced Watershed Management Program elements demonstrates that, on average since 2012, the municipal permittees have implemented pollution controls that address only 9% of the stormwater volume required to meet TMDL Waste Load Allocations. Heal the Bay, Stormwater Report (2019). During that same period, receiving water quality in the Los Angeles area has remained impaired. CITATION [sic]. Clearly the majority of municipalities are not making meaningful progress towards protecting Los Angeles area creeks and beaches. And permittees are open about their projected continued lack of progress; during hearings on the TMDL extensions, some municipal dischargers offered testimony in support of the next deadline extensions. Many of the dischargers also assumed that Measure W</p>	<p>See response to comment No. 0.1. The Environmental Groups previously made a similar comment to the Los Angeles Water Board and no explanation of why the regional board response was inadequate was provided.</p> <p>The State Water Board has reviewed and agrees with the Los Angeles Water Board's response to comment No. 8.3, the relevant portion of which states:</p> <p>"The Staff Report considered the level of progress in determining proposed deadline extensions and, as noted in the comment, made clear that the Safe Clean Water Program is not the only source of funding that should be considered for project implementation."</p> <p>While the Board considered the significant positive impact of the Safe Clean Water Program in Los Angeles County, and the fact that it is a dedicated funding source, the Board agrees that MS4 permittees will also need to continue to seek other sources of funding."</p> <p>State Water Board agrees with the Los</p>
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DRAFT Comment Summary and Responses
Amendments to the Water Quality Control Plan for the Los Angeles Region to Revise the Implementation
Schedules for Nine TMDLs for
Municipal Separate Storm Sewer System (MS4) Dischargers
Comment Due Date: June 21, 2021

		<p>was the sole source of funding for projects designed to meet TMDL deadlines, limiting their ability to comply. Neither the language of Measure W nor the intent of the voters supports this self-serving interpretation.²</p> <p>While sympathetic to the impacts that COVID-19 has had on cities and indeed on all Angelenos, the dischargers' recalcitrance in complying with water quality standards, both long before and during the pandemic, should not be rewarded with extensions of time immediately before final TMDL deadlines become operative. We are very concerned that these proposed extensions will serve as a disincentive for dischargers to get serious about meeting the deadlines. We also are concerned that the precedent set will lead to extensions of other upcoming TMDL deadlines.</p> <p>2. At the workshop, we commented that the Staff Report should make it clear that Measure W funds are not intended to be the universe of funding available. Having read the report in its entirety, we see that it does so repeatedly. We encourage the Regional Board to continue to express opposition to this claim if and when it is made at future public meetings, hearings, and workshops. Dischargers should be more industrious in pursuing funding outside of the Measure W context.</p>	<p>Angeles Water Board that the Safe Clean Water Program is a source of funding but not the only source of funding and that MS4 permittees will need to continue to seek other sources of funding to meet TMDL deadlines.</p>
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DRAFT Comment Summary and Responses
Amendments to the Water Quality Control Plan for the Los Angeles Region to Revise the Implementation
Schedules for Nine TMDLs for
Municipal Separate Storm Sewer System (MS4) Dischargers
Comment Due Date: June 21, 2021

2.4	Environmental Groups	<p>There are Other, More Appropriate Tools Available.</p> <p>Moreover, there are other alternatives to blanket deadline extensions. Such tools provide municipalities with extra time to come into compliance while maintaining greater Regional Board oversight to ensure progress is made. One potential alternative would be through the use of Time Schedule Orders (TSOs). While we are not supportive of TSOs in general, they may offer a potentially superior approach to blanket deadline extensions because they at least require a justification and annual updates from dischargers. Such alternatives should be fully considered before blanket deadline extensions are provided. The Regional Board did not adequately consider the use of alternatives or provide adequate reasoning to support their selection of Basin Plan amendments over these other alternatives.</p>	<p>See response to comment No. 0.1. The Environmental Groups previously made a nearly identical comment to the Los Angeles Water Board and the Los Angeles Water Board responded to it in response to comment No. 8.5 in the <u>Final Comment Summary and Responses for Consideration of Extension of Final TMDL Implementation Deadlines</u>.</p> <p>The State Water Board disagrees that the Los Angeles Water approved “blanket deadline extensions”. The Los Angeles Water Board considered the merits of providing extensions through Basin Plan amendments, TSOs, or a combination of the two and ultimately determined that the combination approach would best leverage the regional board’s regulatory tools to achieve compliance with the TMDL waste load allocations in as short a time as possible. The basis for the Los Angeles Water Board’s rationale included but is not limited to the following:</p> <ol style="list-style-type: none"> 1) The longer extensions of TMDL deadlines sought by the MS4 permittees risked being too open-ended and would not ensure a firm
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DRAFT Comment Summary and Responses
Amendments to the Water Quality Control Plan for the Los Angeles Region to Revise the Implementation
Schedules for Nine TMDLs for
Municipal Separate Storm Sewer System (MS4) Dischargers
Comment Due Date: June 21, 2021

			<p>commitment to meet the TMDL implementation deadlines (Los Angeles Water Board response to comment No. 4.7)</p> <p>2) “the Board agree[d] that TSOs are an appropriate and effective tool for providing targeted and individualized schedules.” (Los Angeles Water Board response to comment No. 8.5)</p> <p>3) “TSOs enable the Board to develop individual schedules and milestones for each Permittee based on their unique circumstances. TSOs also provide added flexibility for the Board to be able to respond to any additional unforeseen delays if appropriate.” (Los Angeles Water Board response to comment No. 2.3)</p> <p>4) TSOs allow for more time to implement TMDLs, while providing accountability for MS4 permittees to ensure they will complete projects on time. (Los Angeles Water Board response to comment No. 7.8)</p> <p>5) Some MS4 Permittees’ believed a</p>
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DRAFT Comment Summary and Responses
Amendments to the Water Quality Control Plan for the Los Angeles Region to Revise the Implementation
Schedules for Nine TMDLs for
Municipal Separate Storm Sewer System (MS4) Dischargers
Comment Due Date: June 21, 2021

			<p>single extension via a Basin Plan amendment would provide more regulatory certainty than a TSO. However, the Los Angeles Water Board concluded that “water quality improvement in a reasonable period of time is the primary consideration for this action, and this consideration should not be overridden by perceived concerns about regulatory certainty...” (Los Angeles Water Board response to comment No. 4.6)</p> <p>The State Water Board has reviewed the Los Angeles Water Board’s rationale for relying on a combination of regulatory mechanisms to provide MS4 dischargers with additional time to achieve waste load allocations and has concluded that the Los Angeles Water Board appropriately exercised its discretion in determining whether and how to provide extensions of final TMDL deadlines.</p>
2.5	Environmental Groups	Additionally, for Marina del Rey harbor (MDR), the Regional Board did not examine how a TMDL deadline extension would interact with possible TMDL adjustments from site specific objectives in the form of Water Effect Ratios (WER). A WER study is currently underway for	<p>See response to comment No. 0.1. The Environmental Groups previously made this comment to the Los Angeles Water Board and the Los Angeles Water Board responded to it in response to comment No. 8.7 in the Final Comment Summary and Responses for</p>

DRAFT Comment Summary and Responses
Amendments to the Water Quality Control Plan for the Los Angeles Region to Revise the Implementation
Schedules for Nine TMDLs for
Municipal Separate Storm Sewer System (MS4) Dischargers
Comment Due Date: June 21, 2021

		copper in MDR and could lead to changes in TMDL limits by application of a WER. Additional monitoring may be required, coupled with a trigger to reconsider the WER, for the duration of the extension.	<p><u>Consideration of Extension of Final TMDL Implementation Deadlines</u>. The State Water Board has reviewed and agrees with the Los Angeles Water Board's response to comment No. 8.7, which states:</p> <p>"The proposed Basin Plan amendment for the Marina Del Rey Harbor Toxics TMDL only extends the implementation schedules for the MS4 permittees. It does not extend the implementation schedules for in-harbor dissolved copper sources, which are the subject of the WER study. The waste load allocations for MS4 permittees are based on the amount of copper in sediment discharged from the watershed and will not be affected by the WER study."</p>
2.6	Environmental Groups	We appreciate that Regional Board staff have tried to balance 'preserving and enhancing water quality in the Los Angeles Region' with uncertainties, and thus have proposed extensions shorter than those requested by the dischargers; however, we still believe the proposed extensions are too long because they are not tied to the actual effects of the COVID pandemic, are based on incorrect assumptions, and that extensions would be better monitored	See response to comment Nos. 2.2 and 2.4.

DRAFT Comment Summary and Responses
Amendments to the Water Quality Control Plan for the Los Angeles Region to Revise the Implementation
Schedules for Nine TMDLs for
Municipal Separate Storm Sewer System (MS4) Dischargers
Comment Due Date: June 21, 2021

		<p>via another tool like a TSO.</p> <p>Thank you for this opportunity to comment, and for the informative presentations by staff at the December 16 workshop, and the robust discussion at the February 11 and March 11 Regional Board meetings concerning this issue. For the reasons discussed above LA Waterkeeper, Heal the Bay, and the Natural Resources Defense Council do not support the proposed TMDL deadline extensions.</p>	
2.7	Environmental Groups	<p>Attached you will find Appendix A: Sign-on Letter sent to the Regional Board in March 2021. The letter was not considered by the Regional Board and should be considered as new testimony to the State Board.</p> <p>To Chair Yee, Vice-Chair Guzmán, and Members of the Los Angeles Regional Water Quality Control Board:</p> <p>The undersigned groups write in opposition to the proposed Basin Plan Amendment for Final Total Maximum Daily Load (TMDL) Implementation Deadline Extensions. We urge the Regional Board to honor the Clean Water Act (CWA) and do justice to the TMDL negotiation process by maintaining existing</p>	<p>The Los Angeles Water Board comment period on this Amendment closed on January 11, 2021. The Los Angeles Water Board did not consider the Sign-on Letter included as Appendix A to the Environmental Groups comment letter to the State Water Board because it was untimely. However, similar comments submitted to the Los Angeles Water Board were addressed.</p> <p>See response to comment Nos. 2.1 and 2.4.</p>

DRAFT Comment Summary and Responses
Amendments to the Water Quality Control Plan for the Los Angeles Region to Revise the Implementation
Schedules for Nine TMDLs for
Municipal Separate Storm Sewer System (MS4) Dischargers
Comment Due Date: June 21, 2021

		<p>deadlines.</p> <p>The CWA of 1972 protects our rivers and oceans by limiting the amount of pollution that can be discharged into our waters and therefore protects the health and resilience of our communities and the ecosystems on which we all depend. TMDL deadlines were developed many years ago with lengthy deadlines that gave permittees nearly 20 years to achieve these CWA pollution limits. However, in certain areas, as little as 2.2% of the structural control measures needed to meet TMDL requirements have been implemented, which means that permittees had fallen far behind schedule on meeting these 2021 deadlines long before the COVID-19 crisis hit. This lack of progress is unacceptable.</p> <p>Although we are all sympathetic to the unprecedented challenges facing permittees today due to COVID-19, we must recognize that these lengthy deadlines were carefully negotiated among all parties, including the permittees themselves, many years ago. We do not want to end up in this same situation 20 years from now, with polluted water, saying that more could have been done. We need you to hold permittees accountable to achieving these</p>	
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DRAFT Comment Summary and Responses
Amendments to the Water Quality Control Plan for the Los Angeles Region to Revise the Implementation
Schedules for Nine TMDLs for
Municipal Separate Storm Sewer System (MS4) Dischargers
Comment Due Date: June 21, 2021

		<p>long-standing CWA pollution limits as quickly as possible.</p> <p>We, therefore, urge the Regional Board to maintain existing deadlines and instead pursue alternative methods to provide additional time for permittees to achieve compliance. For example, Time Schedule Orders, though far from perfect, will allow permittees up to 10 years to come into compliance, but with greater certainty, oversight, and accountability to ensure meaningful progress towards achieving CWA pollution limits. Our waterways and communities have suffered from pollution for far to long; the Regional Board must adopt an approach that provides certainty that this long-standing problem will finally get fixed within a reasonable timeframe.</p>	
3.1	Gardena Valley Democratic Club	<p>The Gardena Valley Democratic Club (GVDC) is pleased to comment on the Proposed Approval of Amendments to the Water Quality Control Plan for the Los Angeles Region to Revise the implementation Schedules for Municipal Separate Storm Sewer System (MS4) Dischargers.</p> <p>GVDC has a membership of 165 City of Gardena and Compton residents. Although the</p>	Comment noted.

DRAFT Comment Summary and Responses
Amendments to the Water Quality Control Plan for the Los Angeles Region to Revise the Implementation
Schedules for Nine TMDLs for
Municipal Separate Storm Sewer System (MS4) Dischargers
Comment Due Date: June 21, 2021

		basin plan amendments do not immediately impact Gardena or Carson, they establish a precedent that will impact it once the Los Angeles Regional Board Basin Plan is amended to extend the metals TMDLs to the Dominguez Channel Watershed.	
3.2	Gardena Valley Democratic Club	<p>In sum, GVDC opposes the amendment based on the following, which was communicated to the Regional Board on several occasions in writing and during MS4 Permit workshops:</p> <p>1.State policy (see Reso, 2008-0025, attachment #1¹) and State Regulation CCR § 2918. Policy for Compliance Schedules in NPDES Permits assert that such schedules are only subject to dischargers with NPDES permits that require compliance with CWA §301. Other MS4 Permittees have made it clear to the Regional Board that CWA §301 does not apply to MS4s. They are subject only to CWA §402(p)(3)(B)(iii), which calls for reduction of pollutants to the maximum extent practicable through the implementation of the Stormwater Management Program.</p>	<p>See response to Comment No. 0.1. This comment is related to the implementation of TMDLs into the Los Angeles Water Board's MS4 permit and is beyond the scope of this proceeding.</p> <p>The commenter opposes the proposed amendment because "compliance schedules" do not apply to MS4 permits. Compliance schedules are "a schedule of remedial measures, including an enforceable sequence of actions or operations leading to compliance with an effluent limitation, other limitations, prohibition, or standard" that are incorporated <i>into NPDES permits</i> (Compliance Schedule Policy; see also 40 CFR § 122.2). Compliance schedules may implement TMDLs established through a Basin Plan amendment. However, whether</p>

¹ Attachment 1 is State Water Resources Control Board Resolution No. 2008-0025. A copy of Resolution No. 2008-0025 is available at https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2008/rs2008_0025.pdf.

DRAFT Comment Summary and Responses
Amendments to the Water Quality Control Plan for the Los Angeles Region to Revise the Implementation
Schedules for Nine TMDLs for
Municipal Separate Storm Sewer System (MS4) Dischargers
Comment Due Date: June 21, 2021

		2. In fact, this was confirmed in a 2016 letter from Sam Unger, former Executive Officer of the Regional Board, to Tomas Torres, Region IX USEPA Water Division Director, affirming that compliance schedules are not required for MS4 Permittees. (see <i>attachment #2, page 2, highlighted area</i>). ² The Regional Board's own letter says that MS4s are not subject to Clean Water Act §301; only general NPDES permits are. These permits do require compliance schedules. The letter also admits that MS4 Permit compliance is subject to CWA §402(p)(3)(B)(iii).	or not an MS4 permit is required by state and/or federal law to include compliance schedules is ultimately a comment on the permit itself and not the underlying TMDLs. Because this hearing is limited to State Board's review of proposed revisions to the TMDL implementation schedules pursuant to Water Code sections 13240 and 13242, this comment will not be considered.
3.3	Gardena Valley Democratic Club	3. Letter dated May 7, 2007 from USEPA affirming that compliance schedules are only required of dischargers subject to CWA §301 (see attachment #3 ³).	See response to comment 3.2.
3.4	Gardena Valley Democratic	4. CFR 40 §122.47 affirming that schedules of compliance only apply to dischargers subject to NPDES permits pursuant to CWA §301.	See response to comment 3.2.

² Attachment 2 is a letter from Los Angeles Water Board: Request for Clean Water Act Section 303(c) Approval of Certain Provisions for the Total Maximum Daily Loads for Metals in the Los Cerritos Channel and Metals and Selenium in the San Gabriel River and Impaired Tributaries". Attachment 2 is not included in this response to comments but is available upon request.

³ Attachment 3 is a memorandum from James A. Hanlon, Office of Wastewater Management, to Alexis Strauss, Water Division EPA Region 9, re: Compliance Schedules for Water-Quality Based Effluent Limitations in NPDES Permit (May 10, 2007). Attachment 3 is not included in this response to comments but is available upon request.

DRAFT Comment Summary and Responses
Amendments to the Water Quality Control Plan for the Los Angeles Region to Revise the Implementation
Schedules for Nine TMDLs for
Municipal Separate Storm Sewer System (MS4) Dischargers
Comment Due Date: June 21, 2021

	Club		
3.5	Gardena Valley Democratic Club	5.CFR 40 §122.44(d)(5), which requires <i>incorporating any more stringent limitations, treatment standards, or schedule of compliance requirements established under Federal or State law or regulations in accordance with section 301(b)(1)(C) of CWA.</i>	See response to comment 3.2.
3.6	Gardena Valley Democratic Club	<p>The basin plan should also not be used to list TMDLs for compliance purposes for the following:</p> <p>6. TMDLs are not static. They can change due to improvements in water quality or a decrease in water quality, based on triennial reviews, which are reflected in updated 303(d) lists. However, basin plans have not been amended to keep-up with TMDL revisions resulting from triennial reviews. This poses a serious problem because they can linger and rolled-over to succeeding MS4 Permits even if they have been delisted. This then necessitates requiring MS4 Permittees to spend money needlessly on non-existent TMDLs.</p>	<p>See response to comment No. 0.1. This comment was not timely raised before the Los Angeles Water Board nor was an explanation of why the commenter was unable to raise the specific comment provided.</p> <p>The State Water Board agrees that TMDLs may need to be revised from time to time. TMDLs adopted as Basin Plan amendments are regulations that must be approved by the State Water Board, the Office of Administrative Law and EPA⁴ before the TMDL becomes effective. As such, any revisions to a TMDL or its implementation schedule must go through the regulatory</p>

⁴ EPA approval is not required for revisions to TMDLs that only address TMDL implementation schedules.

DRAFT Comment Summary and Responses
Amendments to the Water Quality Control Plan for the Los Angeles Region to Revise the Implementation
Schedules for Nine TMDLs for
Municipal Separate Storm Sewer System (MS4) Dischargers
Comment Due Date: June 21, 2021

			<p>approval process.</p> <p>Note, the Triennial Review is an opportunity to reconsider the Basin Plan and set basin planning priorities, however, this process in and of itself does not change the underlying basin plan. Likewise, the 303(d) List is a report to track the status of impaired waterbodies in the State. Changes to the 303(d) list may trigger basin planning actions, but the 303(d) list is not regulatory and does not supersede any existing regulations in a regional board's basin plan.</p>
3.7	Gardena Valley Democratic Club	7. Compliance schedules for TMDLs for MS4 compliance must be restricted to the MS4 Permit, which is limited to 5-years.	See response to comment 3.2.
3.8	Gardena Valley Democratic Club	8. Most of the 303(d) listed TMDL sources (potential and source categories) are not imputed to MS4 discharges. They fall under "unknown" sources or "non-point sources" (which do not apply to NPDES permits), as the example below shows for the Santa Monica Bay Offshore/Near Offshore 2016 303(d) TMDL list. This is one of the TMDLs that the Regional Board is proposing as a basin plan amendment.	<p>See response to Comment No. 0.1. This comment was not timely raised before the Los Angeles Water Board nor was an explanation of why the commenter was unable to raise the specific comment provided.</p> <p>The 303(d) List of Impaired Waters, more commonly known as the 303(d) List, identifies the waters within a state's</p>

DRAFT Comment Summary and Responses
Amendments to the Water Quality Control Plan for the Los Angeles Region to Revise the Implementation
Schedules for Nine TMDLs for
Municipal Separate Storm Sewer System (MS4) Dischargers
Comment Due Date: June 21, 2021

		<table><tr><th>REGION NAME</th><th>WATER BODY NAME</th><th>POLLUTANT</th><th>POTENTIAL SOURCES</th><th>SOURCE CATEGORY</th></tr><tr><td>Regional Board 4 - Los Angeles Region</td><td>Santa Monica Bay Offshore/Nearshore</td><td>PCBs (Polychlorinated biphenyls)</td><td>Source Unknown</td><td>A SOURCE UNKNOWN</td></tr><tr><td>Regional Board 4 - Los Angeles Region</td><td>Santa Monica Bay Offshore/Nearshore</td><td>Trash</td><td>Source Unknown</td><td>A SOURCE UNKNOWN</td></tr><tr><td>Regional Board 4 - Los Angeles Region</td><td>Santa Monica Bay Offshore/Nearshore</td><td>DDT (Dichlorodiphenyltrichloroethane)</td><td>Source Unknown</td><td>A SOURCE UNKNOWN</td></tr><tr><td>Regional Board 4 - Los Angeles Region</td><td>Santa Monica Bay Offshore/Nearshore</td><td>Arsenic</td><td>Source Unknown</td><td>A SOURCE UNKNOWN</td></tr><tr><td>Regional Board 4 - Los Angeles Region</td><td>Santa Monica Bay Offshore/Nearshore</td><td>Mercury</td><td>Source Unknown</td><td>A SOURCE UNKNOWN</td></tr><tr><td>Regional Board 4 - Los Angeles Region</td><td>Santa Monica Beach</td><td>Indicator Bacteria</td><td>Nonpoint Source</td><td>UNSPECIFIED NONPOINT SOURCE</td></tr></table>	REGION NAME	WATER BODY NAME	POLLUTANT	POTENTIAL SOURCES	SOURCE CATEGORY	Regional Board 4 - Los Angeles Region	Santa Monica Bay Offshore/Nearshore	PCBs (Polychlorinated biphenyls)	Source Unknown	A SOURCE UNKNOWN	Regional Board 4 - Los Angeles Region	Santa Monica Bay Offshore/Nearshore	Trash	Source Unknown	A SOURCE UNKNOWN	Regional Board 4 - Los Angeles Region	Santa Monica Bay Offshore/Nearshore	DDT (Dichlorodiphenyltrichloroethane)	Source Unknown	A SOURCE UNKNOWN	Regional Board 4 - Los Angeles Region	Santa Monica Bay Offshore/Nearshore	Arsenic	Source Unknown	A SOURCE UNKNOWN	Regional Board 4 - Los Angeles Region	Santa Monica Bay Offshore/Nearshore	Mercury	Source Unknown	A SOURCE UNKNOWN	Regional Board 4 - Los Angeles Region	Santa Monica Beach	Indicator Bacteria	Nonpoint Source	UNSPECIFIED NONPOINT SOURCE	<p>ndaries not meeting water quality standards (i.e., impaired waters) and the water quality parameter (i.e., pollutant) not being met. The 303(d) List is also used to set state and regional boards' priorities for TMDL development. While the 303(d) List only identify some potential sources of a pollutant in a waterbody, a comprehensive source analysis is completed as part of the TMDL development process.</p> <p>The source analysis is a critical component of any approved TMDL. The source analysis uses scientific studies, literature reviews and other similar sources of information to evaluate the magnitude, location, and timing of pollutant discharges entering an impaired water body. This source analysis is then used to allocate pollutant loadings to point sources (e.g., storm drains) and nonpoint sources (e.g., beaches). The TMDLs at issue in this Amendment have all assigned specific waste load allocations to MS4s. The MS4 dischargers are not responsible for achieving any allocations assigned to other responsible parties, including nonpoint source dischargers, identified in the TMDLs.</p>
REGION NAME	WATER BODY NAME	POLLUTANT	POTENTIAL SOURCES	SOURCE CATEGORY																																		
Regional Board 4 - Los Angeles Region	Santa Monica Bay Offshore/Nearshore	PCBs (Polychlorinated biphenyls)	Source Unknown	A SOURCE UNKNOWN																																		
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4.1	City Norwalk	The City of Norwalk (Norwalk) is pleased to comment on the Proposed Approval of	See response to comment 3.2.																																			

DRAFT Comment Summary and Responses
Amendments to the Water Quality Control Plan for the Los Angeles Region to Revise the Implementation
Schedules for Nine TMDLs for
Municipal Separate Storm Sewer System (MS4) Dischargers
Comment Due Date: June 21, 2021

		<p>Amendments to the Water Quality Control Plan for the Los Angeles Region to Revise the implementation Schedules for Municipal Separate Storm Sewer System (MS4) Dischargers.</p> <p>Although the basin plan amendments do not immediately impact Norwalk, they establish a precedent that will impact it once the Los Angeles Regional Board Basin Plan is amended to extend the metals TMDLs to the San Gabriel River.</p> <p>In sum, Norwalk opposes the amendment based on the following, which was communicated to the Regional Board on several occasions in writing and during MS4 Permit workshops.</p> <p>1. State policy (see Reso, 2008-0025, attachment #1⁵) and State Regulation CCR § 2918. Policy for Compliance Schedules in NPDES Permits assert that such schedules are only subject to dischargers with NPDES permits that require compliance with CWA §301. Norwalk and other MS4 Permittees have made it clear to the Regional Board that CWA §301 does not apply to MS4s. They are subject only</p>	
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⁵ Attachment 1 is a copy of State Water Resources Control Board Resolution No. 2008-0025. A copy of Resolution No. 2008-0025 is available at https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2008/rs2008_0025.pdf.

DRAFT Comment Summary and Responses
Amendments to the Water Quality Control Plan for the Los Angeles Region to Revise the Implementation
Schedules for Nine TMDLs for
Municipal Separate Storm Sewer System (MS4) Dischargers
Comment Due Date: June 21, 2021

		<p>to CWA §402(p)(3)(B)(iii), which calls for reduction of pollutants to the maximum extent practicable through the implementation of the Stormwater Management Program.</p> <p>2. In fact, this was confirmed in a 2016 letter from Sam Unger, former Executive Officer of the Regional Board, to Tomas Torres, Region IX USEPA Water Division Director, affirming that compliance schedules are not required for MS4 Permittees (see <i>attachment #2, page 2, highlighted area</i>).⁶ The Regional Board's own letter says that MS4s are not subject to Clean Water Act §301; only general NPDES permits are. These permits do require compliance schedules. The letter also admits that MS4 Permit compliance is subject to CWA §402(p)(3)(B)(iii).</p>	
4.2	City Norwalk	<p>3. Letter dated May 7, 2007 from USEPA affirming that compliance schedules are only required of dischargers subject to CWA §301 (see attachment #3⁷).</p>	See response to comment 3.2.

⁶ Attachment 2 is a letter from the Los Angeles Water Board: Request for Clean Water Act Section 303(c) Approval of Certain Provisions for the Total Maximum Daily Loads for Metals in the Los Cerritos Channel and Metals and Selenium in the San Gabriel River and Impaired Tributaries" in the Board package. Attachment 2 is not included in this response to comments but is available upon request.

⁷ Attachment 3 is a memorandum from James A. Hanlon, Office of Wastewater Management, to Alexis Strauss, Water Division EPA Region 9, re:

DRAFT Comment Summary and Responses
Amendments to the Water Quality Control Plan for the Los Angeles Region to Revise the Implementation
Schedules for Nine TMDLs for
Municipal Separate Storm Sewer System (MS4) Dischargers
Comment Due Date: June 21, 2021

4.3	City Norwalk	4. CFR 40 §122.47 affirming that schedules of compliance only apply to dischargers subject to NPDES permits pursuant to CWA §301.	See response to comment 3.2.
4.4	City Norwalk	5. CFR 40 §122.44(d)(5), which requires incorporating any more stringent limitations, treatment standards, or schedule of compliance requirements established under Federal or State law or regulations in accordance with section 301(b)(1)(C) of CWA.	See response to comment 3.2.
4.5	City Norwalk	<p>The basin plan should also not be used to list TMDLs for compliance purposes for the following:</p> <p>6. TMDLs are not static. They can change due to improvements in water quality or a decrease in water quality, based on triennial reviews, which are reflected in updated 303(d) lists. However, basin plans have not been amended to keep-up with TMDL revisions resulting from triennial reviews. This poses a serious problem because they can linger and rolled-over to succeeding MS4 Permits even if they have been de-listed. This then necessitates requiring MS4</p>	See response to comment 3.6.

Compliance Schedules for Water-Quality Based Effluent Limitations in NPDES Permit (May 10, 2007). Attachment 3 is not included in this response to comments but is available upon request.

DRAFT Comment Summary and Responses
Amendments to the Water Quality Control Plan for the Los Angeles Region to Revise the Implementation
Schedules for Nine TMDLs for
Municipal Separate Storm Sewer System (MS4) Dischargers
Comment Due Date: June 21, 2021

		Permittees to spend money needlessly on non-existent TMDLs.																																				
4.6	City Norwalk	7. Compliance schedules for TMDLs for MS4 compliance must be restricted to the MS4 Permit, which is limited to 5-years.	See response to comment 3.2.																																			
4.7	City Norwalk	<div>8. Most of the 303(d) listed TMDL sources (potential and source categories) are not imputed to MS4 discharges. They fall under “unknown” sources or “non-point sources” (which do not apply to NPDES permits), as the example below shows for the Santa Monica Bay Offshore/Near Offshore 2016 303(d) TMDL list. This is one of the TMDLs that the Regional Board is proposing as a basin plan amendment.</div> <table><tr><th>REGION NAME</th><th>WATER BODY NAME</th><th>POLLUTANT</th><th>POTENTIAL SOURCES</th><th>SOURCE CATEGORY</th></tr><tr><td>Regional Board 4 - Los Angeles Region</td><td>Santa Monica Bay Offshore/Nearshore</td><td>PCBs (Polychlorinated biphenyls)</td><td>Source Unknown</td><td>A SOURCE UNKNOWN</td></tr><tr><td>Regional Board 4 - Los Angeles Region</td><td>Santa Monica Bay Offshore/Nearshore</td><td>Trash</td><td>Source Unknown</td><td>A SOURCE UNKNOWN</td></tr><tr><td>Regional Board 4 - Los Angeles Region</td><td>Santa Monica Bay Offshore/Nearshore</td><td>DDT (Dichlorodiphenyltrichloroethane)</td><td>Source Unknown</td><td>A SOURCE UNKNOWN</td></tr><tr><td>Regional Board 4 - Los Angeles Region</td><td>Santa Monica Bay Offshore/Nearshore</td><td>Arsenic</td><td>Source Unknown</td><td>A SOURCE UNKNOWN</td></tr><tr><td>Regional Board 4 - Los Angeles Region</td><td>Santa Monica Bay Offshore/Nearshore</td><td>Mercury</td><td>Source Unknown</td><td>A SOURCE UNKNOWN</td></tr><tr><td>Regional Board 4 - Los Angeles Region</td><td>Santa Monica Beach</td><td>Indicator Bacteria</td><td>Nonpoint Source</td><td>UNSPECIFIED NONPOINT SOURCE</td></tr></table>	REGION NAME	WATER BODY NAME	POLLUTANT	POTENTIAL SOURCES	SOURCE CATEGORY	Regional Board 4 - Los Angeles Region	Santa Monica Bay Offshore/Nearshore	PCBs (Polychlorinated biphenyls)	Source Unknown	A SOURCE UNKNOWN	Regional Board 4 - Los Angeles Region	Santa Monica Bay Offshore/Nearshore	Trash	Source Unknown	A SOURCE UNKNOWN	Regional Board 4 - Los Angeles Region	Santa Monica Bay Offshore/Nearshore	DDT (Dichlorodiphenyltrichloroethane)	Source Unknown	A SOURCE UNKNOWN	Regional Board 4 - Los Angeles Region	Santa Monica Bay Offshore/Nearshore	Arsenic	Source Unknown	A SOURCE UNKNOWN	Regional Board 4 - Los Angeles Region	Santa Monica Bay Offshore/Nearshore	Mercury	Source Unknown	A SOURCE UNKNOWN	Regional Board 4 - Los Angeles Region	Santa Monica Beach	Indicator Bacteria	Nonpoint Source	UNSPECIFIED NONPOINT SOURCE	See response to comment 3.8.
REGION NAME	WATER BODY NAME	POLLUTANT	POTENTIAL SOURCES	SOURCE CATEGORY																																		
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DRAFT Comment Summary and Responses
Amendments to the Water Quality Control Plan for the Los Angeles Region to Revise the Implementation
Schedules for Nine TMDLs for
Municipal Separate Storm Sewer System (MS4) Dischargers
Comment Due Date: June 21, 2021

5.1	TECS Environmental	<p>TECS Environmental is pleased to comment on the Proposed Approval of Amendments to the Water Quality Control Plan for the Los Angeles Region to Revise the implementation Schedules for Municipal Separate Storm Sewer System (MS4) Dischargers.</p> <p>First, although the proposed basin plan amendment only impacts coastal sub-watersheds, it sets a precedent for future amendments impacting other sub-watersheds in the Los Angeles Basin.</p>	Comment noted.
5.2	TECS Environmental	<p>Second, TMDLs should not be a basin plan subject. This is because the basin plan does not keep step with triennial review outcomes. TMDLs are not static. They can change due to improvements in water quality or a decrease in water quality, based on triennial reviews, which are reflected in updated 303(d) lists. However, basin plans have not been amended to keep up with TMDL revisions resulting from triennial reviews. This poses a serious problem because they can linger and be rolled-over to succeeding MS4 Permits, even if they have been de-listed. This then necessitates requiring MS4 Permittees to spend money needlessly on non-existent TMDLs.</p>	<p>See response to comment 3.6.</p> <p>Additionally, the State Water Board notes that the Basin Plan is a regulatory instrument. By law, each regional water board is directed to "...formulate and adopt water quality control plans for all areas within the region," including both surface waters and groundwater. (Wat. Code, § 13240.) A water quality control plan has three components: beneficial uses to be protected, water quality objectives that protect those uses, and programs of implementation needed to achieve the water quality objectives. (Wat. Code, § 13050.) TMDLs adopted by the Los Angeles Water Board</p>

DRAFT Comment Summary and Responses
Amendments to the Water Quality Control Plan for the Los Angeles Region to Revise the Implementation
Schedules for Nine TMDLs for
Municipal Separate Storm Sewer System (MS4) Dischargers
Comment Due Date: June 21, 2021

		<p>For example, Reaches 2 and 3 of the Rio Hondo, which are tributary to the Los Angeles River, and Reach 4 of the Los Angeles River, were de-listed for metals according to the 2016 303(d) list. In fact, the State Board de-listed metals for these reaches based on the Los Angeles Regional Board's recommendation. Yet, they along with their compliance/implementation schedules are still in the basin plan. The basin plan should not be regulatory instrument. TMDL implementation and compliance lie exclusively within the scope of NPDES permits and State Waste Discharger Orders.</p> <p>Compliance/implementation schedules for TMDLs applicable to MS4s should be dealt with exclusively in MS4 permits, per federal regulations.</p>	<p>must include programs of implementation and schedules for impaired water bodies to achieve water quality objectives.</p> <p>Any TMDL adopted by the regional board or U.S. EPA must be incorporated into the Basin Plan (40 CFR 130.6(c)(1), 130.7). Additionally, the State requires that any TMDL adopted by the regional boards that will be implemented through multiple regional board actions that will affect multiple persons to be adopted through a basin plan amendment or other regulation. (State Water Quality Control Policy for Addressing Impaired Waters, p. 5.)</p> <p>The TMDL implementation schedules at issue in this action were adopted as Basin Plan amendments because the underlying TMDLs are being implemented through a variety of permitting instruments that apply to both point and nonpoint sources dischargers. Therefore, any revisions to these schedules must be approved through the Basin Plan amendment process.</p>
5.3	TECS Environmental	Second, State policy (see Resolution, 2008-	See response to comment 3.2.

DRAFT Comment Summary and Responses
Amendments to the Water Quality Control Plan for the Los Angeles Region to Revise the Implementation
Schedules for Nine TMDLs for
Municipal Separate Storm Sewer System (MS4) Dischargers
Comment Due Date: June 21, 2021

		<p>0025, attachment #1⁸) and State Regulation CCR § 2918. Policy for Compliance Schedules in NPDES Permits assert that such schedules are only subject to dischargers with NPDES permits that require compliance with CWA §301. Federal regulations supported by court decisions make it clear that CWA §301 does not apply to MS4s. They are subject only to CWA §402(p)(3)(B)(iii), which calls for the reduction of pollutants to the maximum extent practicable through the implementation of the Stormwater Management Program.</p> <p>In fact, this was confirmed in a 2016 letter from Sam Unger, former Executive Officer of the Regional Board, to Tomas Torres, Region IX USEPA Water Division Director, affirming that compliance schedules are not required for MS4 Permittees (<i>see attachment #2, page 2, highlighted area</i>).⁹ The Regional Board's own letter says that MS4s are not subject to Clean Water Act §301; only general NPDES permits are. These permits do require compliance schedules. The letter also admits that MS4</p>	
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⁸ Attachment 1 is copy of State Water Resources Control Board Resolution No. 2008-0025. A copy of Resolution No. 2008-0025 is available at https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2008/rs2008_0025.pdf.

⁹ Attachment 2 is a letter from the Los Angeles Water Board: Request for Clean Water Act Section 303(c) Approval of Certain Provisions for the Total Maximum Daily Loads for Metals in the Los Cerritos Channel and Metals and Selenium in the San Gabriel River and Impaired Tributaries" in the Board package. Attachment 2 is not included in this response to comments but is available upon request.

DRAFT Comment Summary and Responses
Amendments to the Water Quality Control Plan for the Los Angeles Region to Revise the Implementation
Schedules for Nine TMDLs for
Municipal Separate Storm Sewer System (MS4) Dischargers
Comment Due Date: June 21, 2021

		<p>Permit compliance is subject to CWA §402(p)(3)(B)(iii).</p> <p>Based on the comments presented herein, the State Board should reject the basin plan and, should it not, the Office of Administrative Law should do so.</p> <p>In closing, I thank for the State Board for the opportunity to comment on this important matter and I look forward to participating at the Basin Plan public hearing.</p>	
6.1	City of Rosemead	<p>I am pleased to comment on the Proposed Approval of Amendments to the Water Quality Control Plan for the Los Angeles Region to Revise the implementation Schedules for Municipal Separate Storm Sewer System (MS4) Dischargers.</p> <p>Although the basin plan amendments do not immediately impact the City of Rosemead, of which I am a City Council member, they establish a precedent that will impact it once the Los Angeles Regional Board Basin Plan is amended to extend the TMDL deadlines for the</p>	See response to comment 3.2.

DRAFT Comment Summary and Responses
Amendments to the Water Quality Control Plan for the Los Angeles Region to Revise the Implementation
Schedules for Nine TMDLs for
Municipal Separate Storm Sewer System (MS4) Dischargers
Comment Due Date: June 21, 2021

		<p>Los Angeles River.</p> <p>Compliance schedules for MS4 Permittees are contrary to State policy per Resolution 2008-0025 and State Regulation CCR § 2918. Policy for Compliance Schedules in NPDES Permits assert that such schedules are only subject to dischargers with NPDES permits that require compliance with CWA §301.</p> <p>As I have made it clear to the Regional Board, along with other Los Angeles County MS4 Permittees, MS4 Permittees are not subject to Clean Water Act §301. They are subject only to CWA §402(p)(3)(B)(iii), which calls for the reduction of pollutants to the maximum extent practicable through the implementation of the Stormwater Management Program. This was confirmed in a 2016 letter from Sam Unger, former Executive Officer of the Regional Board, to Tomas Torres, Region IX USEPA Water Division Director. Mr. Unger's own letter affirms that MS4s are not subject to Clean Water Act §301.</p>	
7.1	LA County & LACFC	The County of Los Angeles and the Los Angeles County Flood Control District appreciate the opportunity to provide input on the proposed approval of amendments to the water quality	LA County & LACFC's support for the extensions is noted.

DRAFT Comment Summary and Responses
Amendments to the Water Quality Control Plan for the Los Angeles Region to Revise the Implementation
Schedules for Nine TMDLs for
Municipal Separate Storm Sewer System (MS4) Dischargers
Comment Due Date: June 21, 2021

		<p>control plan for the Los Angeles region to revise the final deadlines for certain near term Total Daily Maximum Loads (TMDLs). The County and the District support the approval of the Basin Plan Amendment to extend the final TMDL deadlines as adopted by the Los Angeles Regional Water Quality Control Board (Regional Board). The County and the District understand and acknowledge the State Water Resources Control Board and Regional Board missions to protect water quality and the achievement of water quality standards in as short a period of time as possible.</p> <p>Over the past many years, Los Angeles Region Municipal Separate Storm Sewer System (MS4) Permittees have experienced significant accomplishments with permit implementation, and more remains to be done. The County and the District have invested over \$800 million in programs and projects since the 2012 MS4 Permit was adopted. Despite this massive investment, Permittees are often constrained by various factors beyond their control, in particular financial limitations and project schedules. These constraints were further exacerbated by the extraordinary economic and societal impacts of COVID-19. Unfortunately, the impacts of the COVID-19 pandemic on the economy will create</p>	
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DRAFT Comment Summary and Responses
Amendments to the Water Quality Control Plan for the Los Angeles Region to Revise the Implementation
Schedules for Nine TMDLs for
Municipal Separate Storm Sewer System (MS4) Dischargers
Comment Due Date: June 21, 2021

		<p>a significant strain on the Permittees' budgets toward stormwater projects; particularly, matching funds will less likely be available for the next few years. For example, the County predicted a budget shortfall of about \$1 billion dollars for Fiscal Year 2020-21 and budget shortfalls are expected for the next couple of fiscal years as the economy rebounds to pre-pandemic levels. These budget shortfalls will continue to impact every County program and the stormwater program is not immune to these shortfalls. Since the start of the pandemic, we have experienced a 10 percent cut in our annual budget for stormwater programs and are expecting additional budget cuts in the coming years. Public funds that are traditionally allocated toward stormwater programs are severely constrained due to COVID-19, and shorter timelines and enforcement risks would not change these realities.</p> <p>Voter approval of Measure W in late 2018, which established the Safe, Clean Water Program (SCWP) for Los Angeles County, marks a major success for Permittees in securing a dedicated annual funding source of almost \$300 million. The SCWP is in the early stages and needs time to build momentum. While a portion of the funds are distributed to Permittees annually on a pro-</p>	
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DRAFT Comment Summary and Responses
Amendments to the Water Quality Control Plan for the Los Angeles Region to Revise the Implementation
Schedules for Nine TMDLs for
Municipal Separate Storm Sewer System (MS4) Dischargers
Comment Due Date: June 21, 2021

		<p>rated basis, the remaining portion is distributed to Permittees for projects on a competitive basis similar to a grant program. Although the SCWP has fast-tracked the annual evaluation and selection of projects to fund, the process still takes time. Despite this, several shovel ready projects have received funding in 2020 and are well underway.</p> <p>For these reasons, both the County and the District support the Basin Plan Amendment adopted by the Regional Board on March 11, 2021, and respectfully request the State Water Resources Control Board to approve the necessary extensions of final TMDL implementation deadlines for the listed TMDLs in the Los Angeles Region.</p>	
8.1	LLAR WMG	<p>The Lower Los Angeles River Watershed Management Group (LLAR WMG) is comprised of the Cities of Downey, Lakewood, Long Beach, Lynwood, Paramount, Pico Rivera, Signal Hill, and South Gate, as well as the Los Angeles County Flood Control District. It is fully committed to improving water quality in the Los Angeles Region and appreciates this opportunity to express its unequivocal support for the adoption of the proposed Basin Plan Amendments for the Extension of Final TMDL</p>	<p>LLAR WMG's support for the extensions is noted.</p>

DRAFT Comment Summary and Responses
Amendments to the Water Quality Control Plan for the Los Angeles Region to Revise the Implementation
Schedules for Nine TMDLs for
Municipal Separate Storm Sewer System (MS4) Dischargers
Comment Due Date: June 21, 2021

		<p>Implementation Deadlines for Certain TMDLs, as approved by the Los Angeles Regional Water Quality Control Board on March 11, 2021.</p> <p>While this item does not include any TMDLs with specific application to the LLAR, we are encouraged by this action and look forward to the same consideration in the near future by the Regional Board and State Board for the final deadlines of the Metals and other TMDLs that will soon directly impact the LLAR. The LLAR WMG wishes to thank the State Board and staff for consideration of this letter of support.</p>	
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